

## **REMARKS/ARGUMENTS**

Reexamination of the captioned application is respectfully requested.

### **A. SUMMARY OF THIS AMENDMENT**

By the current amendment, Applicants:

1. Cancel claim 20 without prejudice or disclaimer.
2. Amend claims 1, 5, 8, 15, 19, 35 and 42.
3. Add new dependent claims 44 - 46.
4. Respectfully traverse all rejections.

### **B. THE CLAIMS ARE DEFINITE**

Claims 1, 5, 20 and 42 are objected to because of various informalities (see enumerated paragraphs 1-3 of the Office Action). Claims 8, 13 and 15 stand rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention (see enumerated paragraphs 5-7 of the Office Action).

Applicants have accepted the Examiner's proposals for amending dependent claims 5 and 42, but respectfully decline the Examiner's suggestion for amending independent claim 1. Independent claim 1 correctly recites that the "*plurality of cradles is housed in a substantially flat portion of said housing*", while the Examiner suggested to recite that the '*plurality of cradles houses a substantially flat portion of said housing*', which has an opposite meaning. It is clear, e.g., from Fig. 1, that horizontal shelf portion 5 houses the compartments 8 which define the cradles for portable terminals 9.

Dependent claims 8 and 15 have been amended to moot the alleged indefiniteness.

The Examiner has alleged that claim 13's phrase "*visual communicating means in the proximity of each cradle of said plurality of cradles*" is unclear, and that it is unclear how "terminal lifting means" perform the action of communicating. Applicants consider the language of dependent claim 13 to be clear, and invite the Examiner's close attention to the specification. The specification as originally filed (see specifically page 13, lines 13-22 and page 18, lines 7-14) clearly recites that the "*visual communicating means in the proximity of each cradle of said plurality of cradles*" are provided for visually communicating to the identified customer the terminal to be withdrawn for use. As mentioned in the original specification, these communicating means can be, for example, a led arranged on the upper surface of the compartment corresponding to the terminal to be withdrawn (or a system of leds arranged all around this compartment), or a terminal lifting mechanism (for example, an electromechanical or magnetic mechanism) which, when actuated, lifts the terminal to be withdrawn. When the led is lighted on, or when the terminal is lifted, the customer is given a visual indication (either by the led or by the terminal being lifted, of which terminal is to be withdrawn).

In view of the foregoing and other considerations, all claims should now be accepted as definite.

## **B. PATENTABILITY OF THE CLAIMS**

Claims 1-43 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent 5,696,366 to Ziarno (see enumerated paragraph 9, subparagraphs 1-37 of the Office Action). Of these claims, claims 1, 19, 35 and 36 are independent claims. All prior art rejections are respectfully traversed.

As either now amended or previously presented, the independent claims patentably distinguish over the U.S. Patent 5,696,366 to Ziarno. In view, e.g., of the entirely different uses of the Ziarno apparatus and Applicants' terminals, the obviousness rejections of the present claims should be withdrawn.

All independent claims specifically state, among other things, that Applicants' portable terminals are for "acquiring product data in a shopping centre". The importance of "acquiring product data in a shopping centre" is not solely a recitation of the claim preambles, but persists throughout the independent claims and gives life and meaning to the limitations of the claims.

By contrast, and of significant bearing on the issue of obviousness, Ziarno's portable terminals are not used by customers of a shopping centre for product data acquisition. Moreover, the hand-held devices 100 of Ziarno have an entirely different purpose and use than the hand-held terminals of the Applicant's invention. Specifically, the Ziarno devices are used to collect monetary contributions or gifts by contributors in political, charitable, religious events by reading magnetic cards. On the other hand, Applicants' hand-held terminals are used for product data acquisition in a shopping centre by reading optical, electronic or magnetic codes (see page 6, lines 1-6 of the specification as filed).

Because of Applicants' totally different purpose and use, it would not have been obvious for an artisan in the art to modify the Ziarno devices for acquiring product data at a shopping centre. Nor do the Ziarno devices suggest Applicants' claimed structure which gives rise to the distinctly different use thereof.

In addition, independent claims 1 and 19 have been amended to recite clearly that in the Applicants' apparatus the identified customer is provided with a communication of a corresponding portable terminal to be withdrawn. Independent claim 36 already refers to "identifying a customer entitled to withdraw and use one of the portable terminals".

Importantly, that communication to each identified customer (the communication being an indication of the corresponding terminal to be withdrawn) is responsive to the identification of each customer as being enabled to the use of the portable terminals. In

other words, Applicants require that the customer be first identified, by appropriate identifying means, as being enabled to the use of the portable terminals and then, once identified (or in response to this identification), the customer is apprised of a corresponding portable terminal to be withdrawn for the use.

Applicants' communication to the customer of a corresponding authorized terminal, in response to identification and authorization of the customer, is not taught or suggested by U.S. Patent 5,696,366 to Ziarno. Quite differently, in Ziarno (see the paragraphs cited by the Examiner, column 32, lines 63-67 and 33, lines 1-2), the identification of the contributor is only intended to the verification or validation of his contribution but certainly not to enable the contributor to the use of a corresponding portable terminals.

Moreover, each Ziarno device 100 is used by a plurality of contributors (i.e. each contributors does not use a corresponding portable terminal, see column 32, lines 38-54 of Ziarno). Further, in Ziarno each contributor is identified by reading (by the portable terminal 100) an information bearing card having indicia thereon identifying the cardholder (i.e. the customer is identified after having taken the portable terminals, and specifically by using the portable terminal 100), while Applicants require that the customer be identified before withdrawal a corresponding portable terminal.

Thus, it should also be noted that since in Ziarno each device 100 is used by a plurality of contributors and any contributor may use any portable terminal 100. Such being the case, Ziarno does not need (and would not suggest) any means for communicating to the contributor a corresponding terminals to be used, and thus certainly Ziarno cannot disclose or suggest this limitation of claim 1.

As an aside, Applicants' current amendments to independent claim 1 also involve deleting the feature "*and to process the product data acquired through said terminal*".

This amendment of deletion is supported in the specification as originally filed, which clearly and unequivocally discloses an embodiment of the invention without the feature which has been deleted from claim 1. Specifically, the specification as originally filed discloses an embodiment of the invention wherein the step of processing the product data acquired through the terminals for registration of the shopping and printing of the ticket is not carried out by the data control and processing unit arranged into the dispensing device. See, for example, page 19, lines 18-29, wherein, according to a second shopping mode called One-step-and-go and in case of BATCH terminals, the customer does not return the terminal into the dispensing device after the shopping operation, but he directly brings it to the checkout counter 90 which downloads the shopping data directly from the terminal for registration of the shopping and printing of the ticket through the control station 80 or directly (see also Fig. 4).

As to independent claim 35, amended claim 35 as herewith presented explicitly protects the subject matter disclosed, e.g., on page 27, line 14 to page 28, line 7 of the specification as originally filed. Independent claim 35 is novel and non-obvious over Ziarno because, among other things, Ziarno does not disclose or suggest to use portable terminals belonging to the contributors and intended to be connected to a code reading device distributed by a dispenser located in a shopping centre. The advantages of this solution are clearly derivable from the above cited paragraphs of the specification as originally filed.

In addition thereto, new claims 44-46 have been added. Claim 44 recites the feature "*and to process the product data acquired through said terminal*" previously recited in claim 1. while claims 45 and 46 recite the feature added at the bottom of claim 35. Claims 44-46 should be allowed for reasons including those set forth above.

**C. MISCELLANEOUS**

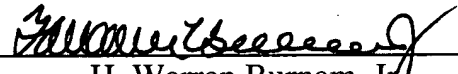
The Commissioner is authorized to charge the undersigned's deposit account #14-1140 in whatever amount is necessary for entry of these papers and the continued pendency of the captioned application.

Should the Examiner feel that an interview with the undersigned would facilitate allowance of this application, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:

  
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